

# **THE PUNJAB RIVER**

## **—WATER DISPUTE**

(AMENDED COPY)

**—THE TRUTH—**

National integration can only materialise when full scope is  
provided for optimum utilization of Natural Resources  
of a State by its people for its Economic Prosperity

### **Aims of the Council of Sikh Affairs**

1. To promote enlightened, informed and independent public opinion on all vital matters pertaining to the Sikhs.
2. To promote the study of various problems and affairs pertaining to the Sikhs in all fields, including religious, social, economic and political.
3. To give proper, independent, unbiased and enlightened lead in all important affairs concerning the Sikhs.
4. To educate public opinion on sound and healthy lines for the good of all etc. etc.

# ERRATUM

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# **The Punjab Water Dispute—The Truth**

## **1. Introduction**

The River waters dispute forms today the prime politico-economic issue in the Punjab. It has become not only the source of acute tension between the Centre and the State, but has also embittered relations between the political parties and the two communities in the Punjab. Unless this problem is handled in a spirit of understanding and solved with a sense of reality, the tensions mentioned above are going to mount and assume serious proportions. With the danger looming large on our borders, it would be very unfortunate to allow such a situation to develop. The problem of River waters being such as affects the entire future of all the crores of Punjabis, it cannot be dismissed as the mere brain wave of the Akalis or as a narrow sectarian demand. But, statements made in the press and otherwise by responsible persons instead of being constructive or helpful, dole out facts and arguments that are clearly incorrect or irrelevant. This unfortunate position is due either to the ignorance of facts or to a desire to camouflage them. It is, therefore, in the public interest that the realities of the case are brought out for all concerned to see beyond the haze of political or partisan dust and judge the issues for themselves.

## **2. The Problem**

In 1976, the Prime Minister announced an award under section 78 of the Punjab Reorganisation Act allotting to the riparian State of Punjab only about 23% of the waters of its own rivers, Ravi and Beas, and 75% of the waters and energy of these rivers to the non-riparian States of Rajasthan, Haryana and Delhi. As this unfair decision was the climax of the continuous draining

out of the water and energy potential of Punjab, it evoked a strong protest and reaction in the State, especially in the rural Punjab and among the Sikhs, who are predominantly farmers. Later, when the Akalis came into power, the Punjab Government filed, in 1978, a case in<sup>6</sup> the Supreme Court for the annulment of the Prime Minister's award on grounds of its being patently illegal and grossly unjust. But in December 1981, the Central Government in order to obviate the Supreme Court's decision on the award, got an agreement, modifying the award, made by the Congress Chief Ministers of Rajasthan, Haryana and the Punjab. Accordingly, the Congress Government of Punjab was obliged to withdraw the case filed by its predecessor, the Akali Government, in the Supreme Court. This agreement under section 78 is a virtual endorsement of the Prime Minister's award challenged in the Supreme Court, except that by a statistical jugglery, while the share of Haryana was maintained, that of Rajasthan and the Punjab was apparently raised, of the latter from 23% to 24%. The manner of haste in which this agreement was secured, especially when the entire issue, including the competence of the Central Government to deal with the matter, was pending in the Supreme Court, and when prolonged parleys in this regard were going on with the Akalis, is very intriguing, raising thereby many well based suspicions in the minds of the Sikhs in particular, and the Punjabis in general, about the legality and justness of the agreements. The net result of this new distribution is that about 75% of the available water & energy of the Punjab rivers has been allotted to the non-riparian states, & a time limit has been fixed for the execution of the Sutlej Yamuna link Canal, a post reorganisation project, even beyond the scope of Section 78 of the Reorganisation Act, 1966. But, an unfortunate result of this new agreement was that the pending case in the Supreme Court was withdrawn & all doors of legal remedy were closed & sealed, thereby saving the exposure of the evident illegality of the award of 1976 and the usurpation of the waters of Punjab rivers and the control of its rivers and river projects including present and future extension of projects.

In order to have a true appreciation of the Punjab Water Dispute, it is necessary to view it in the proper perspective, and know its history, the factual position, and the related inter-national and national laws practices and principles on which it should be settled.



### 3. The Riparian Law, Rights and Practices :

#### International Law :

It is an universally accepted principle of the international and the national laws and practice that only a riparian State has the rights to use in its river waters and their energy and develop the section of the river which runs its territory. As such, the dispute, if any, about the use or exploitation of the river waters can only be between two co-riparian States and never between a riparian State and non-riparian State. For the latter can have no claim on or rights in a river running completely outside its territory. I. G. Stark in his book "An Introduction of International Law" says : "Where a river lies wholly within the territory of one State. It belongs entirely to that State and generally speaking no other State is entitled to rights of navigation on it. Also where a river passes through several States, each State owns that part of the river, which runs through its territory". This is the principle on which both the present international laws and national laws, including the Common Law of England are based. Helsinki rules for inter State water allocation, also lay down the same principle mentioned above. This was also confirmed by Mr. N D. Gulati, of the Indus water Commission," in his report that he made in 1955.

The world over the present view of the law is that river and river waters are an essential part of land or territory. And absolute rights in its land or territory constitutes an integral attribute of a State. Therefore, so far as State rivers are concerned, there never has been any doubt as to the full and absolute rights of the State for there use in any manner, the State may like to do. No non-riparian State has any concern with, much, less a right in the use of, the waters of a river or in the use of land or territory in another State. Berber in his book "Rivers in International law" writes, "State territory, which is thus, a principle sphere of "essentially domestic" matters, undoubtedly includes those waters flowing within it, the so-called "national waters". Heffer another authority, says, "Supreme territorial power is thus sovereignty applied to a particular land or waters, the right to dispose of them to the exclusion of third

State and their subjects". Sumisarian states. "There is no limitation on the right of a State to divert".

- (a) the waters of a tributary (wholly within its territory) of boundry waters, and
- (b) the waters of a river which crosses an international boundary line".

The important point to understand is that there is no limitation whatsoever on the rights of a riparian State except to a small extent in relation to a lower riparian or a co-riparian State. Smith an English authority, concludes : "No State is justified in opposing the unilateral action of another in utilising waters if such action neither causes nor threatens any appreciable injury to the former State". For, "when a water way crosses two or more territories in succession, each of the States concerned possesses rights of sovereignty and ownership over the section flowing through its territory". An objection, if any, can only be from a co-riparian State. In fact, even in a common river basin it is only a co-riparian State that can raise any objection or claim any share concerning the rights of waters of the river.

#### **4. The Constitutional Position and the Narmada Ruling :**

It is this principle which is fully accepted, and embodied in our Constitution. Vide entry 17 of List II of the Seventh Schedule of our Constitution, rivers and river waters have been kept only as a State subject. The entry reads :

- \* 17—water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I. Entry 56 of List I of the Seventh Schedule reads :

"56—Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by parliament by law to be expedient in the

public interest." Article 262 of our Constitution runs as follows :

**\* 262 Adjudication of disputes relating to waters of inter-state rivers or river valleys**

(1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

Entry 56 and Article 262 regarding a State river the state has full & exclusive legislative and executive powers under Articles 246 (3) and 162 of our Constitution give authority to parliament to legislate only in regard to inter-State rivers and not in regard to the waters of a State river over which the concerned State alone has full and final authority. A river valley is "a tract of land lying between mountains and hills, generally traversed by a stream or a river or containing a lake, usually narrower than a vale and lying between steeper slopes". Valley also means a "land drained or watered by a great river". River valley is thus a term narrower than a river basin.

It is pertinent here to mention that Haryana, the chief river of which is Yamuna, is a part of Ganga-Yamuna basin. It is clearly beyond the basins of Rivers Ravi, Beas and Sutlej. At the 1958 Conference of International Law Association a basin has been defined thus :

"A drainage basin is an area within the territories of two or more States in which all the streams of flowing surface water, both natural and artificial, drain a common water-shed terminating in a common outlet or common outlets either to the sea or to a lake or to some inland place from which there is no apparent outlet to a sea". Experts in Indian geography have also Stated, that Haryana & Rajasthan are outside the basin or valley of Punjab rivers.

As such, Haryana forms a part of the Ganga-Yamuna basin and is clearly outside the basin of Sutlej, Ravi and Beas. Neither these rivers drain Haryana Delhi or Rajasthan, nor the streams from these three territories fall into the Punjab rivers nor have the streams from those three areas and the Punjab rivers have a common outlet into a sea or a lake. Thus, Haryana, Rajasthan and Delhi have neither a common basis with Punjab nor are these co-riparians with it, and in order to claim share in a river, a State should not only have a common basin but should also be a co-riparian. For only "each co-riparian State is entitled to a reasonable and equitable share in the beneficial uses of waters of the drainage basin".

The basic point to understand is that by no stretch of logic can Sutlej, Ravi or Beas be called inter-State rivers. Both by legal and geographic definition, these three rivers are State rivers of Punjab. Haryana as a successor state, cannot claim any right in these Punjab rivers because there can be no succession in the field of geography environment or hydrological status of an area, State or Country. Every state must accept its own geographical or topographical status. Entry 56 and Article 262 are only two provisions in the constitution dealing with inter state rivers and giving powers to Parliament to legislate in regard to these the Parliament has specifically defined and expressed the scoped intent of these articles by promulgating the River Board Act, 1956 and the Inter State Water Disputes Act, 1956. Even by a broad constitution of the provisions of these two Acts the three Punjab rivers cannot be called or deemed inter-state rivers. Therefore neither under its powers of re-organisation of states, nor under its powers of legislation can the Parliament pass an Act about the state rivers of Punjab. As such, Sections 78 to 80 of the Punjab Reorganisation Act, 1968 are invalid and unconstitutional.

The basis of the above principle of International law and our national law is that since for centuries on end, it is the people of the territories through which the river passes, who suffer incalculable and continuous devastation and loss of men, cattle, housing, land and property from the floods and ravages caused by the river, it is only those inhabitants and the State of those territories that are, in equity, entitled to the benefits accruing from the concerned river. From

among the Punjabis, Rajasthanies, Haryanvis, Delhvis, it is only the Punjab and Punjabis, who are entitled to the benefits from the rivers, Sutlej, Beas and Ravi, since they alone have suffered and will continue to suffer from their ravages.

The geographic position is that Haryana, Rajasthan and Delhi are non-riparian States, being outside the basin or the valley of the three Punjab rivers, Sutlej, Ravi & Beas. Under Entry 17 of the list II (Seventh Schedule) of our Constitution, river waters and irrigation are State subjects. As such, neither can the Central Govt. intervene, arbitrate or enact any law on the subject, nor can Rajasthan or Haryana claim any right whatsoever in the Punjab rivers. These issues were very specifically gone into by the tribunal appointed under the Inter-State Water Disputes Act, 1956. Rajasthan, a non-riparian State, made through the Govt. of India a claim before this tribunal for water rights in the Narmada river. In this case the decisions of the Tribunal (made in 1974) are that :

- i) Rajasthan, being a non-riparian State in regard to Narmada, cannot apply to the Tribunal, because under the Act only a co-riparian State can do so; and
- ii) The State of Rajasthan is not entitled to any portion of the waters of Narmada basin on the ground that the state of Rajasthan is not a co-riparian state or that no portion of its territory is situated in the basin of river Narmada. The case before the Tribunal, which was presided over by a sitting judge of the Supreme Court, was argued by the best legal talent of the Country, namely, Messrs Daphtary, Palkhiwala, Nariman, A. K. Sen, Niren De (for the Union of India) & others.

The view of Mr. S M Sikri, formerly the Chief Justice of the Supreme Court regarding the right of Haryana in the Punjab rivers is : "The fact that the Central Govt. paid to Pakistan a sum of £ 62 millions in order to obtain unrestricted use of all waters of Eastern Rivers, the Sutlej, Ravi & Beas, is irrelevant to the question, namely, what if any, are the rights of Haryana in the Ravi and Beas. It

is irrelevant because the effect of the Indus treaty, 1960, was that the sovereign right of erstwhile State of Punjab to control or regulate the use of waters of Ravi & Beas which was a limited right in 1966 in view of the existence of International Servitude (page 51 of law of succession by Counsel) ceased to be limited in 1970. It was the re-organised State of Punjab which had either retained the Sovereign right under the Act or acquired it under the Act '.

The net result is that, under the existing Constitution, no non-riparian State has any right to the waters or the hydel power of riparian Punjab.

## **5. Practice and Precedents**

Now, let us see what have been the practices and precedents regarding Sutlej, Beas and Ravi and other State rivers in the country.

- (i) In December, 1947, a dispute arose about the canal waters of rivers Sutlej, Beas and Ravi flowing into the West Punjab (Pakistan). The issue was dealt with by the Punjab Partition Committee. The stand of the East Punjab Government was that only East Punjab had proprietary rights over the three rivers. On the 20th December, 1947, two Chief Engineers from the West Punjab and two from the East Punjab agreed to maintain upto the 31st March, 1948, status quo ante on the Upper Bari Doab Canal and at Ferozepur. This agreement was approved by the Punjab Partition Committee only. It had a clause that "further agreement for any period subsequent to the aforesaid date could be negotiated by the two concerned parties."
- (ii) Again as the West Punjab Government took no further step to extend the agreement, the East Punjab Government stopped the flow of water to the West Punjab. In order to solve the issue, the Chief Engineers of the two Punjabs met at Simla on the 18th April, 1948, and concluded two agreements between the Governments of the East Punjab and West Punjab, which were to take effect from the date of their ratification

by the Dominions of India and Pakistan". The Dominion of India fully supported the stand of East Punjab about the latter's sole proprietorship of the three rivers.

- (iii) The final agreement ratified by India and Pakistan says : "A dispute has arisen between East Punjab and West Punjab Governments regarding the supply by East Punjab of water to the Canal Bari Doab, Dipalpur canals in West Punjab ; the contention of the East Punjab Government is that under the Punjab Partition (Apportionment of assets and liabilities) Order, 1947, and the arbitral award, the proprietor rights in the water of rivers in the East Punjab vest wholly in the East Punjab Government and that the West Punjab Government cannot claim any share of these waters as of right".

(2) The East Punjab Government has revived the flow of water into these canals on certain conditions".

(3), (4) & (5). "West Punjab Government has agreed to deposit immediately in the Reserve Bank such adhoc sums as may be specified..... Out of this sum that Government agreed to the immediate transfer to the East Punjab Government sums over which there is no dispute".

(6) & (7). The Dominion Governments of India and Pakistan accept the above terms and express the hope that a friendly solution would be reached.

- (iv) Before the partition of India, the Punjab Province recovered royalty and other expenses for the supply of its waters in the Ganganagar area (now Rajasthan).

From all the above events, one thing is clear that whether it was the question of a dispute, negotiations, or compensation, the proprietary rights over the rivers Sutlej, Beas and Ravi were, invariably, recognised as those of the riparian East Punjab. Neither Rajasthan (or Government of Ganganagar area), nor PEPSU,

nor the Governments of the areas that were formerly princely States and now form part of Haryana (like Jind, Mohindergarh, etc.) were ever consulted or made a party to the dispute, or became recipient of the compensation. The point for emphasis is that riparian rights belong solely and exclusively to the riparian State. These do not vest in any area so as to be carried even outside the riparian State. The case of Jind area illustrates the point. When this area was part of the Jind State (outside East Punjab), it was a non-riparian territory and its Government never became a party to the dispute which arose between the co-riparian State of East Punjab and West Punjab regarding the waters of these three rivers. But, as a part of the pre-reorganised Punjab (1956 to 1966), it became an area of the Riparian Punjab. Again, after 1966, Jind ceased to be riparian, except for benefits already enjoyed as a part of a riparian State, because it was transferred outside the riparian State of Punjab. The mere fact that for about ten years it remained a part of the riparian State of Punjab does not confer on it any fundamental or inalienable rights to the future benefits from the Punjab rivers. That was exactly the principle on the basis of which after the partition, East Punjab lost all rights to the rivers of Jhelum, Chenab etc. of the West Punjab and gained full rights to the rivers Sutlej, Beas and Ravi. Under the Indus Water Treaty, the compensation paid to the West Punjab was regarding the cost of essential Works of Diversion of Jhelum and Chenab waters to old Punjab Canals and not for the cost of river waters of Sutlej, Beas and Ravi whose proprietorship was accepted as that of East Punjab in the same way as that of West Punjab was accepted regarding Chenab, Jhelum and Indus. For, no independent country would place the irrigation or the agricultural production of its territories at the mercy of river water supply controlled by another country, especially when East Punjab had within six months, twice stopped the flow of water to the West Punjab canals.

- (v) It is because of the complete recognition of the above principle that though there are numerous disputes pending in India about riparian rights, yet all of them are between co-riparian States. There is not even one dispute in India or outside India in which a non-riparian State is a party, or is claiming water as of right from a riparian State.
- (vi) The Punjab is the only riparian State, more than two third waters of



which have been diverted by the Centre to non-riparian States like Rajasthan, Haryana and Delhi. The issue relates to the fundamental territorial rights of Punjab which have been brutally destroyed by the said award and the agreements.

- (vii) Except in the case of the Punjab Reorganisation Act, in no other reorganisation Act, there is a provision like section 78 to provide for the transfer of water and energy from a State river or from a riparian State to a non-riparian State or area. Article 262 of the Constitution of India gives power to Parliament to legislate only regarding inter-State rivers and never about State rivers like Sutlej, Beas and Ravi.
- (viii) It has, therefore, been felt that the agreement of December, 1981, or the award of 1976, involve a blatant act of discrimination against Punjab, especially when as an agricultural State it needs every drop of water and energy that its rivers can yield, and, yet, it has been deprived of the major portion of it. Before we indicate how this repeated discrimination has worked, it would be pertinent to make a realistic assessment of the water requirements of Punjab.

## 6. Water Requirements of the Punjab

(I) **Loss of Land and Water at partition :—**At the time of Independence, the Sikhs decided to throw their lot with India. The old Punjab had, therefore, to be divided. As it happened, this division involved a catastrophic loss of life, lands and property of the Punjabis, especially the Sikhs. Lakhs of casualties were suffered, millions were uprooted from their hearths and homes, involving the greatest compulsory migration in human history. The Punjabis had to leave lacs of acres of well-developed land, mostly colonised by them almost the whole of it was irrigated, mostly by canals. Against this loss, the available land in East Punjab was only less than half, of which only one-third was irrigated. It is important to bear in mind that a very large majority of these forced migrants were from the present Punjab and very few were from the areas of Haryana and Rajasthan.

Punjab has been known for three things ; its self-reliant people and peasantry, its level and productive lands, and its abundant sources of water and energy. Apart from the compulsory migration and the loss of fertile lands, the worst part of the tragedy was its having lost its priceless and almost unlimited sources of water and energy from its six rivers. The old Punjab had about 170 MAF of river waters. But the East Punjab was left with only 37 MAF of water, about 80% of it having remained in West Punjab. Such was the tremendous loss in land, water and energy potential, the East Punjab and Punjabis suffered after partition of the country. This loss was crucial because Punjab's welfare and prosperity depended on agriculture which sustains 80% of its people. While the State has the finest peasantry, its main handicap is its scanty and unsure rainfall. Water and energy resources, therefore, hold the key to the well-being of Punjab and its people, since the State has no other natural advantages like minerals, oil or a good sea coast.

Here it is essential to emphasize the basic importance of water to the economic development of a State, more especially for the Punjab. Dr. W. C. Lowdermilk in his report to the Economic Social Development Council of the United Nations writes, "the present water supplies in both developed as well as undeveloped areas are either already insufficient or will prove to be so, in the foreseeable future, which will mean a severe set-back to the economic development. The rate of increase in water requirements is greater than that in population." We shall now assess what are the minimum water needs of the State, and, then, indicate what the Central Government has done to drain them out to the impoverishment of Punjab.

(ii) **Water needs :** In food production Punjab was almost a deficit State after partition. Today it supplies over 60% of the country's food stocks of wheat and rice. This is entirely due to the system of multiple cropping, especially the rotation of wheat and paddy and higher dosages of irrigation and fertilisers. This wheat-paddy rotation is the secret of Punjab's prosperity. The area under wheat and paddy has, in the last ten years, gone up from 63 lac acres to 100 lac acres. Rice cultivation, which is very water intensive, has gone up by over ten times after the Independence. So much so that last year when

wheat procurement was 40 lac tonnes, rice procurement was 50 lac tonnes. Similarly, the cultivation of other crops like vegetables, potatoes, sugarcane, etc. which require even a higher intensity of irrigation than rice and wheat, is growing manifold. Double cropping and intensive assured and timely irrigation are the key stone of modern agriculture. Besides, culturable land being a fixed and a limiting factor, all progress in agriculture can be only by multiple cropping which is possible only by developing further means of assured irrigation. Double cropping was very low in 1947, It rose to 25% in 1960-61 and to 40% 1970-71 and to 60% in 1980-81. It is rising rapidly every year, the only constraint being assured irrigation. Subject to water resources, it will reach 100% within this decade.

According to the University and expert recommendations, the normal wheat-paddy rotation on an average, needs 5 to 6 acre ft. of water per acre. This is nothing abnormal because the water allowance permitted in Rajasthan from the Punjab waters is 5.5 acre ft. of water per acre. The culturable area of Punjab being 105 lac acres, its water requirements would normally be 52.5 MAF.

(iii) Canal Irrigation a limiting factor : With the increasingly diminishing size of holdings and lamentable lack both of the intensity and the extension of canal irrigation, economic sustenance has become a major problem for the hardy and enterprising Punjab peasants. In the perennial canals, water supply is given to only 27.5% of the commanded area in Kharif, and to 34.5% in Rabi. In the restricted perennial canals, where no supply is given for two months, the area irrigated is 20% in Kharif and 25% in Rabi. The non-perennial canals irrigate only 35% of the commanded area. In addition, the major draw back is that not only is the percentage of area irrigated very low, but the water allowance permitted per acre is poor, the same having been fixed when non-hybrid wheat, gram, etc. with low fertilisation and water needs, were the major crops. In 1950-51, the areas sown under wheat, rice, gram and Bajra were 28, 3, 23 and 5 lac acres respectively, as against 70, 30, 6, 1½ lac acres in 1980-81. Thus, while water allowance and intensity are woefully inadequate to promote or sustain the new cropping pattern, much less double cropping, the Government pace of the extension of irrigation is pathetically slow, e.g. whereas between 60-62 and 80-81,

canal irrigation increased by only 6 lac acres that by private tube-wells went up by 20 lac acres.

(iv) **The Peasants Demand, Anxiety and Effort :** The peasants' pressing needs for increase in the area and intensity of assured irrigation are neither inflated nor mythical. These emerge from the hard necessity of shift to modern patterns of agriculture so as to survive economically. Let us see what he has done on his own so as to create assured irrigation for his crops.

The per acre capital cost of tubewell irrigation is about Rs. 1200/-. The loss or payment of interest alone comes to Rs. 120/- per acre each year. For the farmer, the capital cost of canal irrigation is nil. Apart from the capital cost, the recurring cost of electric tubewell irrigation is three times that of canal irrigation. And diesel tubewell irrigation is, on account of the rising cost of oil and repairs, twelve times more expensive than canal irrigation. Despite the heavy capital and running cost of tubewell irrigation, the peasants' water requirements are so great, acute, and pressing that in 1980-81, the State had 2.8 lac electric tubewells and 3.3 lac diesel tubewells, against only 91 thousand tubewells in 1960-61. The result is that out of the total irrigated area of 85 lac acres 49 lac acres is irrigated by tubewells and 35 lacs by Government canals. While after 1960, tubewell irrigation rose by 20 lac acres, canal irrigation increased by a bare 3 lac acres in 15 years. The dire acuteness of the need for assured irrigation can be gauged from what the farmers have done on their own, without waiting for canal irrigation, even though they have to shoulder a tremendously heavy burden of capital cost, 600 crores at present day prices, and an increasingly prohibitive running cost.

(v) **Total requirement of water :** It is, thus, obvious that our calculation about the total requirement of 52.5 MAF of water for 105 lac acres of culturable area, including 20 lac acres of unirrigated area, and 35 lac acres of inadequately irrigated area, is quite conservative. Because, the cultural practices and cropping patterns, and the mounting needs of assured irrigation indicate that, before the close of the century, this assessment of 52.5 MAF would also become inadequate.

In fact, the Punjab Government has itself to Central Govt. conveyed its water needs at 50 m.a.f.

(vi) **The present state and availability of water :** The total availability of water from the Sutlej, Beas and Ravi is 32 MAF. It is evident that the 35 lac acres said to be irrigated by the canals are in name only. The intensity and water allowance per acre are too inadequate either to mature the existing, or the recommended cropping patterns, or to make for assured irrigation. Because of the non-availability of water, many of the canals either cannot be run perennially or are given inadequate supply, even lower than their projected capacity, as in the case of channels of the Beas project. It is, therefore obvious that not only is every drop of its present river water required by the Punjab, and it has nothing to spare for the non-riparian States, but the existing electric tubewell irrigation will perforce have to be increased so as to secure assured irrigation for the 105 lac culturable area of the State. But, there is no justification for the riparian Punjab to force its peasants to resort to diesel irrigation, because diesel supply, being uncertain, scarce and highly expensive, involves an uneconomic mode of production. In the riparian Punjab, with ample resources of water and energy, this means of irrigation needs to be replaced completely by canal or electric irrigation. Besides, there are areas in the State that can be irrigated only by the canals and not by tubewells. Therefore, not only the entire river waters of the Punjab rivers have to be fully utilised, but a large-scale extension of electric tubewell irrigation will be necessary.

## **7. Over Extraction of Sub-Soil Water**

Another very important aspect of the issue has been completely ignored by the Govt. The Council of Sikh Affairs has time and again been trying to focus the attention of all concerned on the question of the quantum of sub-soil water available in Punjab and its extraction. Most of us have been only talking about surface water and calling it surplus. Since canal water is not available to meet their full requirements the peasants have been forced to sink tube-wells in order to supplement & sustain modern agriculture by assured irrigation. Comparatively Punjab has a shallow strata of sub-soil water. The annexure 1

Item 10 of the Punjab Government white paper maintains that the underground extractable water potential is only 3 m. a. f. But, each year by our 6 lac tubewells we are drawing about 12 m. a. f. of water. The result of this excessive extraction is very evident from the fact that the Sub-soil water level has gone down from 8 to 10 feet in general and at some places from 40 to 50 feet. This fall in the water level is increasing more rapidly now since the number of tube-wells goes up each year. The farmers have to sink down their tube-wells after every 2nd and 3rd year on this account which costs them thousands of rupees in capital investment, apart from the progressively increasing running expenditure incurred on account of lifting water to a higher level.

The loss of sub-soil water is being further aggravated by the lining of the Canals, thus stopping the existing percolation of water. If this excessive extraction of 9 m. a. f. of sub-soil water is not stopped, the result will be disastrous for the Punjab. Numerous tube-wells will dry-up within a few years and arid or semiarid conditions are likely to prevail. Could the Government provide answer as to how they intend to remedy this major discrepancy as there is hardly enough water available to run the existing canals even at 50% of their present capacity, and that too at a very low scale of water which is almost half of what has been allowed to Rajasthan from the Punjab rivers.

Another aspect, which is well known to the Rajasthan Government and the Centre is that there are vast reserves of underground water in Rajasthan, which are not being tapped.

On the other hand, there are a few areas in Punjab where tube-wells cannot be sunk due to brackish water. In such cases only canal water can be used.

Would the fairminded people in India consider this question dispassionably? In order to avoid this impending destruction, the Punjab immediately needs 9 m. a. f. of water so as to stop the depletion of sub-soil water and highly uneconomical diesel tube-well irrigation. How is the deficiency of over 9 m. a. f. of sub-soil water which is being excessively extracted at present is going to be met? Why not take timely steps to prevent another area of India becoming a dry region? Why should they deprive Punjab of its only wealth?

If more water is needed by Haryana and Rajasthan, why not draw it from its own sub-soil reservoir and its basin sources where there is enough supply of water. The Centre is preparing schemes to spend thousands of crores for the utilization of Ganga Basin water for far away areas in the Deccan, but tapping sub-soil lakes of Rajasthan should be given priority.

8. Such being the position of Punjab irrigation and the peasants' genuine and factual requirements of water, let us now see what the Central and State Governments have actually done to provide assured irrigation to the Punjab peasants and to develop Punjab's water and energy resources so as to promote agricultural production and Punjab prosperity.

#### **9. Government Decisions Continuously and Calculatedly Drain Out Water And Energy Resources of Punjab to Non-Riparian States.**

We shall now record the various decisions made under the auspices of the Central Government regarding the use of Punjab waters that fell to the share of East Punjab in 1947. On the basis of 1921-22 to 1945-46 series the waters of the three rivers are 32.7 MAF (Sutlej : 13.6 and Beas : 12.7 and Ravi : 6.4). The dependable water resources of these rivers are far less (26.9 MAF). Actual flow of Ravi-Beas is 18.98 MAF.

- (i) The first Central decision related to the Sutlej. Under the Bhakra scheme about 25 lac acres have to be irrigated in the non-riparian areas of Haryana (16 lacs) and Rajasthan (9 lacs) and only about 11 lac acres in the riparian Punjab. This scheme proposes to utilise all the available waters of the river Sutlej. This was the first step for diverting over two-third of the water and energy of the Sutlej to the non-riparian States who have no right to the waters of Punjab rivers
- (ii) Another major and unwarranted encroachment on the riparian rights of Punjab was made in 1955 when Shri G. L. Nanda, whose reputation for his prejudices against Punjab was well known, was the irrigation

Minister at the Centre. Under his chairmanship, the distribution of Ravi and Beas was made. The total waters of these two rivers are 18.98 MAF. In the prepartition days already 3.4 MAF were being used, leaving a balance of 15.58 MAF.

The distribution made was as under :—

1. East Punjab	: 5.9 MAF (Riparian State)
2. Jammu & Kashmir	: 0.65 „ (Riparian State)
3. Rajasthan	: 8.0 „ (Non-Riparian State)
4. PEPSU	: 1.30 „ (Non-Riparian State)
	except for the Beas river

Here again the Central distribution gave about 60% of the Ravi and Beas waters to the non-riparian States. The circumstances under which this distribution was made and its validity will be explained later while discussing the Central Award of 1976. This distribution gave to areas that became Punjab in 1955 only 7.2 MAF of water (5.9+1.3).

(iii) Later in 1955 the Punjab Government made a scheme for the utilisation of this 7.2 MAF of waters in Punjab. The scheme proposed as under :

1. UBDC	1.69 MAF (against the requirement of 3.17 MAF)
2. Chak Andher Tract	0.24 MAF
3. Bet area of Ravi and Beas	0.23 MAF
4. Shah Nahr	0.79 MAF
5. Eastern Canal	0.21 MAF
6. Sirhind Feeder	2.79 MAF
7. PEPSU area	1.33 MAF
	<hr/>
	7.28 MAF
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All these canals relate to the present Punjab and no part of this water was proposed to be utilised in the present non-riparian Haryana.

- (iv) But, later in 1961, the Congress Government revised the project to include in it the supply of water to some areas of the present non-riparian Haryana. Though the rivers Ravi and Beas have nothing to do with Haryana, yet this was the third encroachment on the riparian rights of the Punjab. The earlier scheme of Distribution was revised as under :—

1. U. B. D. C.	1.835 MAF	
2. Chak Anohar Tract	0.163 MAF	
3. Eastern Canal	0.232 MAF	
4. Makhu Canal	0.163 MAF	
5. Sirhind & Bhakra including part of erstwhile PEPSU	4.021 MAF	
6. Gurgaon Canal	0.307 MAF	) Yumuna basin
7. Sohna Lift scheme	0.133 MAF	
8. Eastern Yamuna Canal	0.104 MAF	
9. Delhi Water Supply	0.119 MAF	
	<hr/> 7.27 MAF <hr/>	

The enormity of this decision is that some areas of the Yamuna Basin, non-riparian so far as Punjab rivers are concerned, were included in this distribution. Yet the total water allotted to the non-riparian Haryana in the revised project was only 0.9 MAF. It is of importance to note that at both the times the Scheme was not only approved by the Centre, but Haryana's interests were fully represented, since the irrigation Minister in the Punjab on both the occasions was from the Haryana tract. Atleast, it is obvious that despite the Centre's desire to drain the water resources of Punjab for the non-riparian States, it became committed to giving only 0.9 MAF to the non-riparian Haryana out of the 7.2 MAF of the Ravi-Beas Waters.

- (v) But, in 1966, at the time of the reorganisation of Punjab, the Centre's

desire further to drain Punjab of its water and energy resources grew keen again, and it went back on its own decision whereunder it had finally accepted to give only 0.9 MAF to Haryana. In violation of the accepted purpose of the Project, the Centre introduced section 78 in the Reorganisation Act giving arbitrary powers to the Central Government to divide the waters of the Beas Project in any manner or ratio it liked. Though otherwise the division of assets was fixed at 60% for Punjab and 40% for Haryana. This provision of 5.78 was both uncalled for and illegal. It was unnecessary because in the project and the earlier distribution the share of Haryana stood clearly defined and indicated. It had also been accepted by the Centre as such. The question of its change or reallocation could not arise because the areas to be irrigated and the quantum of water supply to be given to each area had been fixed. Nothing had been kept fluid. Therefore, except for the motive of giving Haryana a higher allocation of water than fixed earlier, the introduction of section 78 was unnecessary.

The provision of section 78 was illegal because entry 56 in the List I and Article 262 of the Constitution authorise the Parliament for the regulation of only inter-state rivers, and Ravi and Beas are State rivers of Punjab and not inter-State rivers since no part of them flows through Haryana or Rajasthan. Hence the regulation of State rivers like Ravi and Beas was beyond the purview of the Parliament. Evidently, it was for this reason that the Centre, at the time of reorganisation, excluded the distribution of the surplus water of Yamuna (otherwise a Punjab river) from the purview of section 78. Because, only a State Legislature and not the Parliament can regulate the waters of a State river. Obviously, by excluding Yamuna, the State river of Haryana, from, and including Ravi and Beas, the State rivers of Punjab, within the purview of section 78, the Centre was conscious both of its illegal and discriminatory character. In its entire history, the Indian Legislature has not passed any other Reorganisation Act providing for the regulation of a State river. When Madras was bifurcated, it lost all rights to the waters of Krishna and Panner rivers in Andhra, because it became non-riparian in regard to these rivers. Therefore, when the Centre knew that provision of section 78 was unconstitutional, discriminatory,

and unnecessary the Government could have introduced it only with a motive to make further inroads into the riparian rights of Punjab. The subsequent history of the case and the award giving 75% of the Beas and Ravi waters to the non-riparian States of Haryana, Delhi and Rajasthan expose that motive unambiguously.

- (vi) Emboldened by the provisions of section 78, Haryana declined to accept its allotted share of 0.9 MAF from the Beas Project and wanted an obliging Centre to give the award. In 1976, this award was given as under : —

1. Rajasthan	(non-riparian State)	: 8.00 MAF
2. Haryana	(non-riparian State)	: 3.50 MAF
3. Delhi	(non-riparian state)	: 0.20 MAF
4. Punjab	(riparian State)	: 3.50 MAF

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15.2 MAF

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Apart from the fact that section 78 under which the award was given is in itself discriminatory and unconstitutional, this decision as shown below completely flouts both the provisions of section 78 itself and the factual data ;

The relevant provisions of section 78 run as follows :—

**\*78. Rights and liabilities in regard to Bhakra-Nangal and Beas Projects—**

(1) Notwithstanding anything contained in this Act but subject to the provisions of sections 79 and 80, all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States in such proportion as may be fixed, and subject to such adjustments as may be made, by agreement entered into by the said States after consultation with the Central

Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the Projects :

Provided that the order so made by the Central Government may be varied by the subsequent agreement entered into by the successor States after consultation with the Central Government.

(2) An agreement or order referred to in sub-section (1) shall if there has been an extension or further development of either of the projects referred to in that sub-section after the appointed day provide also for the rights and liabilities of the successor States in relation to such extension or further development.

(3) The rights and liabilities referred to in sub-sections (1) and (2) shall include—

- (a) the rights to receive and to utilise the water available for distribution as a result of the projects, and
- (b) the rights to receive and to utilise the power generated as a result of the projects,

but shall not include the rights and liabilities under any contract entered into before the appointed day by the Government of the existing State of Punjab with any person or authority other than Government.

4. In this section and in sections 79 and 80,—

(A) "Beas Project" means the works which are either under construction or are to be constructed as components of the Beas-Sutlej Link Project (Unit-I) and Pong Dam Project on the Beas river (Unit-II) including.

(i) Beas-Sutlej Link Project (Unit-I) comprising—

- (a) Pandoh Dam and works appurtenant thereto,
  - (b) Pandoh-Baggi Tunnel,
  - (c) Sundernagar Hydel Channel,
  - (d) Sundernagar Sutlej Tunnel,
  - (e) By-pass Tunnel
  - (f) four generating units each of 165 M.W capacity at Dehar Power House on the right side of Sutlej river,
  - (g) fifth generating unit of 120 M.W. capacity at Bhakra Right Bank Power House,
  - (h) transmission lines,
- (i) Balancing Reservoir;
- (ii) Pong Dam Project (Unit-II) comprising—
- (a) Pong Dam and Works appurtenant thereto,
  - (b) Outlet Works,
  - (c) Penstock Tunnels,
  - (d) Power plant with four generating units of 60 M.W. each,
- (iii) such other works as are ancillary to the works aforesaid and are of common interest to more than one State;
- (B) “Bhakra-Nangal Project” means—
- (i) Bhakra Dam, Reservoir and works appurtenant thereto;
  - (ii) Nangal Dam and Nangal Hydel Channel;
  - (iii) Bhakra Main Line and canal system ;
  - (iv) Bhakra left Bank Power House, Ganguwal Power House and Kotla Power House, switch-yards, sub-stations and transmission lines ;

- (v) Bhakra Right Bank Power House, with four units of 120 M.W. each.” These provisions emphasise two things, namely, that it is only the waters of the Beas Project that would be distributed, and, secondly, that this regulation would be with the sole object of meeting the purposes of the Beas Project. The purposes of the Beas Project, we have seen, stand clearly defined and detailed. The areas to be served, the water to be supplied to each area, the channels to be dug, and the works to be constructed are all specified in the Project approved and accepted by the Centre. The following prescribed purposes of the Beas Project have been thrown to the winds and the award creates altogether new purposes going far outside the purview of the Project and section 78.

(a) The Beas project as defined in section 78(4) A means the works under construction or to be constructed as components of (1) Beas Sutlej Link project (Unit I) and Pong Dam Project on the Beas river (Unit II) It is only the Beas waters available from these two works that can be distributed under section 78(3) (a). For, the Beas Project as defined above, has to be construed strictly. This definition which is very specific clearly excludes (1) works like the Ravi-Beas Link that were in existence even before the initiation of the Beas Project (It is only the works that are ‘under construction’ or are to be constructed that are included in the Beas Project); and, (2) The Ravi waters or works like the Thein Dam that will store the Ravi waters. Accordingly, all the Ravi waters stand excluded from the scope of section 78 or the Beas Project as defined in this section, in which there is no mention whatsoever either of the old works, or of the waters of Ravi or of any Project that might be related to the river Ravi. The two Projects of Pong Dam and Beas-Sutlej Link specifically relate only to the Beas waters, and that, too, only with that part of Beas waters that is dealt with by these two works. Hence, the distribution of 17.17 MAF of waters, and earlier 15.58 of waters is illegal and beyond the scope of section 78. Because both the award and the modified agreement have been made under section 78(1) and the proviso thereto. The two works mentioned in section 78(4) only relate to a part of Beas waters ; and that part alone could be distributed or regulated under section 73(3) (a), keeping into view the purpose of these two works as

laid down in the approved Beas Project. According to the Beas Project, the purpose of these two works is to supply 3.22 MAF at Harike (3.66 minus .44 MAF in use from pre-partition days) and 2.22 MAF at Ropar (3.6 minus 1.374 to go to Harike). This comes to 5.44 M.A.F. This quantum of water is thus the only water that could be distributed or regulated under section 78(1) and (3)(a), Hence the illegality of the distribution of waters to the extent of 17.17 or 15.58 MAF.

(b) Secondly, under section 78 (1) rights and benefits of the defined Beas Project could be allocated only to the successor States as defined in section 2 (m) of the Punjab Reorganisation Act, 1966, namely, Punjab, Haryana and Chandigarh. Thus the allocation of benefits and waters to Rajasthan or Delhi is illegal, being an allotment to non-successor States, and being for that reason, beyond the scope of section 78.

(c) Thirdly, the participation of Rajasthan in the agreement of December, 1981 is beyond the scope and contemplation of proviso to section 78(1) under which successor States alone could enter into an agreement. Therefore, the participation of Rajasthan and the allocation of waters to it in the agreement vitiate the entire agreement and its related proceedings.

(d) Fourthly, the SYL canal, the time-bound execution of which forms a part of the Agreement of 1981, made under the proviso to section 78(1), is a work completely beyond the scope of the Beas Project as defined in section 78. In fact, it is a work even far beyond the purposes of the original or the accepted Beas Project of 1959, 1961 or 1966. In that Project there is a complete detail of the waters available at each point of distribution, the areas to be irrigated, the channels to be dug etc. and, yet, there is no mention whatsoever of the SYL Project or a canal scheme of like nature planned to carry 3.5 MAF. Actually there is no scope at all of the availability of 3.5 MAF of waters at any single point, since all the waters the Beas Project has to yield, stand allocated to different areas and points of distribution. In reality, the SYL canal, to be started from Nangal for supply to Haryana and to carry 3.5 MAF of waters, is a project

conceived and framed by Haryana after the Reorganisation in 1966. It is, thus, a work neither 'under construction' in 1966, nor 'to be constructed under the Project', nor within the contemplation of the farmers of the Beas Project. Hence, this work is clearly beyond the scope, consequences and purposes not only of the Beas Project as defined in section 78, but also of the Project as framed or accepted before October, 1966. It is an entirely new Project devised by Haryana after 1966 and, this is now sought to be thrust on the Punjab through the good offices and the powers of the Centre. Otherwise, how could it be that its capacity, alignment, cost, etc. have remained undetermined and undefined in the project which took years to formulate and was finalised and revised twice before 1966 ?

(e) Fifthly, no Beas Project canal from Harike plans supply of water to Haryana out of the supply there of 3.22 MAF. The entire waters are projected to be supplied to the Punjab area. Out of the 2.22 MAF to be supplied at Ropar only 0.9 MAF have to go to the Haryana area, the same having been fixed in the earlier distribution itself. Keeping the clear purpose of the Beas Project intact, all that the Centre could do was to alter by re-calculations, on the basis of the projected areas to be supplied in Punjab and Haryana, the quantity of waters to go to each State out of 2.22 to be made available at Ropar. According to the Punjab, the Project calculations worked Haryana's share at 0.9 MAF. If there was any arithmetical error the Centre could re-check those calculations in accordance with the defined purpose of the Project for distribution of 2.22 MAF of waters at Ropar. We have, thus, indicated what, at worst, was the scope for the Centre to re-allocate the shares of Punjab and Haryana under section 78 of the Act. But, the Centre, as explained below, in its Award of 1976, defied completely both the purposes of the Project and the provisions of section 78

(f) Non-riparian Haryana has been given 3.5 MAF at Nangal when the project provides for the delivery of 3.22 MAF at Harike with no channels to supply any water to Haryana and of 2.22 MAF at Ropar for supply to the channels both of Punjab and of Haryana. Under the Beas Project, Punjab has already constructed channels that are ready to supply water to the projected areas in Punjab. Non-perennial supply is already being given, but perennial



supply could be made only after the Central decision. But how can now the projected perennial supply be made to Punjab, when instead of the contemplated 0.9 MAF, 3.5 MAF have been allotted to Haryana for areas that are beyond the plan or the purpose of the project? The purpose of the Project was to supply about 4.54 MAF to Punjab (3.22 at Harike and 1.32 MAF at Ropar) and about 0.90 MAF to Haryana. But, the Central award completely frustrated the purpose of the Project. In fact, by the allotment of 3.5 to Haryana the entire project has been virtually demolished. The Punjab channels constructed under the project have become largely redundant. The purpose of the project has been so drastically altered as to affect adversely the economic fate and future of Punjab and millions of Punjabis. Under section 78, the Centre has no powers of regulation that go beyond the purposes of the defined Beas Project.

(g) Now, let us see why the Centre did it and allotted 8.6 MAF to Rajasthan a non-riparian and non-successor State, in the modified agreement under section 78(1). Upto November 1954, no one ever thought that the Beas-Ravi waters of East Punjab could at all be diverted to the non-riparian Rajasthan. Even in the meeting of November, 1954, all that the Central Ministry stressed was that the waters of the riparian East Punjab "in the rivers Beas and Ravi should be utilized to the maximum possible extent and should be developed as early as possible". For, the rate of withdrawal of East Punjab waters of Beas and Ravi from Pakistan would depend on the rate at which Pakistan could replace the supplies received from East Punjab and the rate at which we could utilise those supplies. In the agreements with the West Punjab quoted earlier, it is recognised that the proprietorship of the three rivers vests only in the East Punjab. In January, 1955, Mr. Gulati, India's Chief Negotiator, wrote from Washington that a study team of the World Bank would soon be visiting the country and we should immediately prepare schemes showing full utilization of Beas-Ravi waters. The Centre grew penicky. We had made no plans or projects for the early utilisation of our waters. Earlier, Rajasthan was so disinterested that it even refused to finance a related survey for the purpose. Shri G. L. Nanda, the then Central Irrigation Minister, seized upon this opportunity to deprive Punjab of its inviolable and recognised riparian rights. In the same month, January 1955, a hurried meeting was called at Delhi under

his chairmanship and, like the juggler's rabbit, a paper proposal for the utilisation of Beas-Ravi waters was made and approved including the use of 8.0 MAF in Rajasthan. That this proposal was only a paper scheme and contrived only for the consumption of the visiting team is clear from two facts. It was made and approved within 28 days of Mr. Gulati's letter. No worthwhile scheme costing even a few lacs, much less a multi-purpose river project involving thousands of crores, the supply of 8.00 MAF of waters, and the interlinking of rivers, can be realistically framed within about a few weeks. And even though 27 years have since elapsed, hardly anything has been done by Rajasthan to put the scheme on ground. The important point is that the record of a Central meeting, approving such a farce of a proposal cannot be called an agreement, and certainly not an inter-State agreement legally valid under our Constitution. Our law and Constitution clearly provide for a manner and a formality for the execution of inter-State agreements. Secondly, bartering away of the waters of a State river by a riparian State could, under our Constitution, be done only by an Act of the State Legislature. Nothing of the two things happened in relation to this gift of Punjab's proprietary rights of Rajasthan. Thirdly, no international treaty or inter-State agreement can have any validity if it violates the spirit and the provisions of our Constitution. For, Article 13 of the Constitution itself declares as void all laws contrary to the provisions of the Constitution. Further, the allocation of the Punjab waters finds mention only in the preamble of the treaty and forms no part of it. As such, any allocation or mention against the clear provisions of the Constitution can have no value or validity, it being void-ab-initio.

All these years the Centre was aware of the invalidity and illegality of the so-called approved proposal of January, 1955, as also of the Indus Water Treaty in which this agreement is reflected. So, the object of making an allocation of 8.00 to Rajasthan under the Central Award of 1976 was a vain attempt to give a seemingly legal coverage under section 78 of the Act to a proposal that was ab-initio void and without any legal sanction. But, as we have indicated above, the Centre's anxiety to deprive Punjab of 8.00 MAF of waters and give the step a legal umbrella under s. 78, has in fact, landed it into a greater legal mess and muddle.

- (vi) The Central Award of 1976 proved to be the last straw on the camel's back. There was a wave of protest against the award in the Punjab. It was clear that the Centre was determined unfairly to drain out Punjab's water and energy resources to non riparian States for reasons of its own. When the Akalis came into power in the Punjab, the State Government filed a suit in the Supreme Court of India for the declaration of section 78 as unconstitutional and the award as unjust and illegal. The Akali Government felt that it would be able to have the wrong righted through constitutional means. It is understood that in an inter-State meeting with the Chief Ministers, regarding the river dispute, the Chief Minister, of Rajasthan claimed a share in the Thein Dam. The Prime Minister, Shri Morarji Desai, asked him if the Punjab rivers ran through Rajasthan. On the latter's denial, the Prime Minister observed, "those persons were fools who gave you share of their own waters". This cryptic assertion of the riparian principle silenced the Chief Minister, of Rajasthan and gave hope to Punjab that the injustice would be righted.
- (vii) In 1981, there started the agitation against the Centre or two scores, namely, on the grievances of the Sikhs, and for the amendment of the Constitution in order to give greater autonomy to the States. The decisions regarding the River Water and Power Dispute were cited as a major instance of the abuse of the Central powers to drain out the wealth of Punjab's water and energy potential. It was also stated that the Punjab's attempt to exploits its energy and water resources through the Thein Dam had been frustrated by the Centre for the last 18 years and its power to approve the project was being used as a handle to co-erce Punjab into accepting the transfer of its water and energy to non-riparian States. But, wiser counsels prevailed on both sides, and negotiations on the Sikh grievances started between the Prime Minister and the Akalis. The Central decisions on the River water dispute formed one of the major issues. The Central Award of 1976 could not be implemented because its legality had been questioned in the Supreme Court.

It has been suggested that the Centre was uneasy about its shaky legal

position on the issues pending in the Supreme Court, and that it felt that if the Supreme Court gave an adverse decision, its entire apple cart of the illegal allotment of about 66% of Punjab's riparian resources to the non-riparian States would be upset. While the negotiations on this issue had been pending with Akalis for some months, the Central Government suddenly called a meeting of the Congress Chief Ministers. In this meeting, the Central Award of 1976, as we have seen, was virtually got endorsed from the Chief Minister, Punjab and the Punjab Government, as per the condition of the agreement, had to withdraw its case from the Supreme Court.

At this meeting, a statistical jugglery was indulged in. Earlier, it had been stated, on the basis of 1920-21-45-46 series that the available Ravi Beas waters were 15.58 MAF. This time the 1920-21-60-61 series were taken as the base and it was stated that waters available were 17.17 MAF. While the shares of Haryana and Delhi were maintained, those of Rajasthan and Punjab were increased from 8.00 to 8.6 MAF and 3.5 to 4.22 MAF, respectively. Why all these years, the 1920-21-40-46 series was used even when the 1920-21-60-61 series was available and why suddenly the 1920-21-60-61 series was adopted even though the 1920-21-1980-81 series was available remains a mystery. The reason suggested is that 1920-21-60-61 series have been used to inflate figures because in this period there had been two very major floods and the 1920-21-1980-81 series was not disclosed since it again deflated the figure of available waters. It is also necessary to note that according to the 1920-21-60-61 series the Sutlej waters show a fall of .271 MAF. In arriving at the overall figure of the waters of Beas and Ravi, this decrease should have been deducted from the total. Besides, it is well known to the experts that the figures of Ravi waters are inflated and unauthentic because of the defective or improper conditions of gauging there. Instead of 23% of its waters, Punjab now gets 24%, and the remaining waters and energy go to the non-riparian States except 0.65 MAF to J & K. This constitutes the final step in the deprivation of Punjab of the major part of its wealth of water and energy.

It has been stated that the Centre's anxiety to camouflage its unjust and illegal award under an inter-State agreement and to avoid the impending verdict

of the Supreme Court was so great that it would not wait even for the conclusion of its talks with the Akalis. As was obvious, the talks broke since the Centre presented the Akalis with a fait accompli on an issue which was crucial to them and formed the major act of discrimination and riding rough shod over the interests of Punjab generally, and the Sikhs particularly. From the reports appearing in the Press (Indian Express) about the Prime Minister's open expression of her wrath to the Chief Minister, Punjab, it has been suggested that his resistance to the unjust award was broken and he had to endorse the agreement of December 1981, and withdraw the case from the Supreme Court.

#### 10. (i) The Basic Issues are Constitutional

The basic issues in the Punjab Rivers Waters dispute are (i) whether in view of river waters, irrigation and water power being exclusively state subjects under Entry 17 of list II of the seventh schedule of the Indian Constitution, and in view of the Constitutional decision in the Narmada water dispute, the non-riparian states of Rajasthan, Haryana & Delhi (These being outside the basin and valley of the rivers Sutlej, Ravi and Beas), have any rights to water and power of the three Punjab rivers? (ii) whether the provisions of Section 78 to 80 of the Punjab Reorganisation Act in so far as these relate to the water & water power of the state rivers of Satluj, Ravi & Beas are violative of the Article 14 of the constitutions and are ultra vires of the constitution because of the entries No. 17 mentioned above? (iii) whether, as such, the agreement of December 1981 is ultra vires of the constitution & of the provisions of the law especially because (a) of making Rajasthan, a non successor state, a party to the agreement under section 78 and (b) of including in the agreement conditions for the construction of the S. Y. L. Canal, a post 1966 project which is beyond the scope of section 78?.....

The point for emphasis is that all the disputed issues being purely and basically constitutional, it is only the Supreme Court which can finally and conclusively decide them. And on these issues, it is the verdict of that court alone that would be binding on all the concerned states and parties. Neither the decision of a retired or sitting judge, as a Commission or as an arbitrator, can have any legal force regarding the constitutional issues, nor would such a

decision inspire any confidence of or acceptance by the concerned parties. In fact, such a decision, as in the case of Shah Commission, would always be looked upon with suspicion by one party or the other, involving further tension and animosity between the people of opposing states. Already, senior Leaders in Haryana and Punjab have made threatening statements openly saying that they would sacrifice blood in support of their respective stands. Delay and reluctance on the part of the Centre to have a regular decision of the Supreme Court on purely constitutional issues, have already been causing a strong impression that the present agreement is partial and unconstitutional, because otherwise the Centre would not be anxious to avoid a judicial verdict by the Supreme Court.

Therefore, any decision, except by the Supreme Court would not only be un-acceptable to one party or the other but would also embitter feelings and be detrimental to the cause of national integration.

Therefore, the only right method to solve this thorny problem of the Punjab situation is to file a regular case in the Supreme Court so as to have its formal verdict in accordance with the law and Constitution of the country. Once a Constitutional solution of this major problem is made, it would not be difficult to settle other issues in order to restore normalcy in the state and peace and amity among the peoples of different states.

It is, thus, the duty of every section of the Government and the public, Hindus and Sikhs alike, to press for the case being filed before the Supreme Court in order to have a final judicial pronouncement on this constitutional issue.

## (ii) The real cause of Water Dispute

Since 1966, the Central control has altered the position illegally to the advantage of Haryana, Rajasthan and Delhi. The causes of the water dispute are Section 78 to 80 of the Punjab Reorganisation Act 1966, which unconstitutionally give the entire power of control, administration and development of the multipurpose projects on all the three Punjab rivers and also of the oppor-tion-

ment of the waters & hydel power from these three rivers to the Central Government. After 1966, under these three Sections the Centre has done the following :—

- a) Earlier, Bhakra Control Board was a non-statutory Board of the Punjab Government, with its Chairman, Secretary and the General Manager of the project and three other members from the Punjab, two members from Rajasthan and one from Himachal Pradesh. This Board and its administration worked under the Punjab Government. Now, under Section 79 to 80 of the P. R. Act 1966, a Statutory Board has been created under the control of the Central Government. The Chairman, two working Members and two other Members will be appointed by the Centre & there will be one Member each from Haryana, Himachal, Rajasthan and Punjab. This board will also control the completed Beas Project and any future extension of the Projects on all the three Punjab rivers. The net result is that with this change in control.
- (i) The Central Board has wrongly allowed 1.9 m. a. f. of waters to Haryana instead of the projected 0.9 m. a. f. allotted to it under the Beas Project.
- (ii) The S.Y.L. Canal, a post reorganisation Haryana Scheme not included in the Beas Project, has been allowed to be constructed.
- (iii) Increased water is being allowed to flow to Rajasthan when the so called 1955 allotment as explained by the public statement of Sh. Kanwar Sain, the then Chairman of the Water Power Commission, is no agreement at all and actually Rajasthan has no rights to the waters of the Punjab rivers. The Narmada Tribunal, before which Rajasthan filed this agreement and cited its claims regarding the Punjab, observed : "utilisation of Ravi & Beas. The apportionment of the waters was the result of an agreement. It appears from Rajasthan Documents Volume VI at pages 26 & 32 that Punjab was

prepared to satisfy the needs of Rajasthan provided its own needs as a riparian state were first satisfied ..... Tested in the light of these principles, we are unable to say that Rajasthan has fulfilled the burden of showing the requirement of opinio necessitates. Nor is there evidence of a clear and continuous course of conduct with regard to the rights of Rajasthan as a non-riparian state in the rivers of Punjab or Uttar Pradesh....".

- (iv) The net result is that the state subjects of irrigation and Hydel Power have virtually been unconstitutionally transferred to the Central list and control.

Hence the basic question is not so much of the distribution of waters as of the validity of Sections 78 to 80 of the P.R. Act which have deprived the Punjabis and Punjab of their fundamental Constitutional rights. These Constitutional issues can be decided only by The Supreme Court and not by the Tribunal, which is not competent to decide these issues; both because it cannot decide Constitutional issues and because Ravi, Beas and Sutlej are not Inter-state rivers vis a vis Haryana and Rajasthan. Apart from the apportionment of waters, the control and administration and development of Punjab Irrigation Hydel Projects will remain with the centre so long as Sections 78 to 80 are not struck down by the Supreme Court.

Therefore, after cancelling the agreement of 1981, award of 1976 and the so-called allotment of 1955, the constitutional issues should be placed before the Supreme Court for adjudication under Article 131. The matters should not be referred to the Tribunal. Such a step will be suicidal, since whatever be the position on apportionment, the control and development of Punjab Irrigation and Hydel Projects would remain with the Centre. Till the decision by the Supreme Court, the position should be frozen as in October 1966, and not as today when the Central Government has unilaterally and unconstitutionally altered the position as it existed in October 1966.



**(iii) Water Dispute should be placed before the Supreme Court and not referred to the Tribunal.**

On the issue of waters and Hydel power, Punjab's stand is very clear and specific. Sutlej, Beas and Ravi are Punjab or State rivers vis a vis Rajasthan, Haryana and Delhi which are non-riparian areas. As such, it is the constitutional right of Punjab alone, to the exclusion of the Centre, Rajasthan and Haryana, to use, develop and control, and also to legislate, about all the waters, energy and projects of these three rivers. Since independence, all Central steps or schemes regarding irrigation and hydel projects in the Punjab have been involved in violation of the Entry 17 of the State list of our Constitution and the ruling and pronouncement of the Narmada Tribunal that the non-riparian States have no right to the waters of a riparian State.

Therefore, Sections 78 to 80 of the Punjab Re-organization Act of 1966 are considered to be the latest unconstitutional and major encroachments on the fundamental rights of Punjab, because under it the Centre has assumed powers :—

- a) to control, develop and administer the multipurpose projects of Bhakra Nangal, the Beas Project and the old and new Head Works, etc. on the three Punjab rivers ;
- b) to apportion the waters and energy of the three Punjab rivers and even of the benefits from future Project like the Thein Dam that may be undertaken in regard to them.

It is under the cover of these powers of apportionment of waters that the Centre has under Section 78 vide its award of 1976 (Notification of 24th March, 1976, Gazette of India, Part II. Section Sub-Section ii) and the agreement of 31st December, 1981, given 76% of the waters and energy of the Punjab rivers Ravi and Beas to the non-riparian States of Rajasthan, Haryana and Delhi, and only 24% of these waters and energy to the riparian Punjab. The major portion

**(about 70%) of the waters of Sutlej had already been illegally allotted to Rajasthan and Haryana under the Bhakra Nangal Project.**

**Today, Punjab and the Sikhs are awake to their fundamental rights. The basic Constitutional questions are :—**

- i) Whether Haryana, Rajasthan and Delhi have no rights whatsoever to the three rivers of the Punjab, just be as Punjab has no rights to the waters and energy of Jamana, a State River of Haryana ;**
- ii) whether sections 78 to 80 of the Punjab Reorganization Act, 1966, are invalid ; both because those sections in contravention of Entry 17 of the State List of our Constitution, assume control of State rivers and State Projects, and because these are discriminatory and violative of Articles 14 of the Constitution, in so far as these Provisions, on the one hand, fail to protect the Constitutional and riparian rights of Punjab by assuming the powers of Control, distribution and administration of the Punjab waters, Head Works and Projects, and by, on the other hand, giving protection to Haryana by excluding from these Sections the powers of Control, distribution and administration of the waters of Jamana and related projects and headworks like Fajewala. Okhla, etc.**
- iii) and whether any constitutional powers or authority vested in the Central Government under which it gave the award of 1976 and again modified that award in consultation with the State Governments concerned, and whether the Central Government exercised these powers in pursuance of any valid law or any provision of the Indian Constitution.**

**Therefore, the only court that can decide these Constitutional issues and the validity of sections 78 to 80 of the Punjab Reorganization Act is the Supreme Court. It is important to stress that these issues about the vires of this Act, which is the root-cause of the entire dispute cannot be referred to a Tribunal under the Inter-state Waters Dispute Act 1956, because it is competent neither to entertain these Constitutional**

issues, nor to give decisions thereon. It is these invalid sections 78 to 80 of P.R. Act that are the root-cause of :

- a) empowering the Central Government to assume control, development and administration of the multi-purpose projects like the Beas and Bhakra Projects, their head-works, etc. ;
- b) enabling the Central Government to refuse permission to the State Government for the Construction of the Thein Dam on Ravi ;
- c) enabling the Central Government to give award on the distribution of all the river waters of Punjab.

Hence, the emphasis that unless this root-cause is eliminated, Punjab, would continue to be denuded of its waters, the Capitalised value of which is Rs. 36.000 crores. In addition, it would lose an annual agricultural and industrial production of Rs. 10,000 crores per annum. Such a situation would naturally jeopardize the entire economic future of Punjab for all generations to come.

We have already made it clear that, as officially conveyed to the centre on the basis of expert agricultural and other opinion, Punjab needs about 52 m.a.f. of waters as against 32 m. a. f. available in its rivers. According to Government, the sub-soil water that can reasonably be drawn by the Tube-wells is 3 m. a. f. Actually, by our 6 lac Tube-wells we are drawing about 12 m.a.f., thereby causing serious sinking of the sub-soil water level and damage to our soil.

A spurious argument has been advanced that in the face of the Inter-State Water Disputes Act, 1956, the River Dispute cannot be referred to the Supreme Court. This argument is fallacious for two reasons :—

- a) the issue to be referred is about the validity of the sections 78 to 80 of the P. R. Act. Legally, this issue can be decided only by the Supreme

Court. It cannot be heard by a Tribunal under the Inter-State R. D. Act of 1956. In fact it is exactly regarding this issue that the Akali Government, after getting the best legal advice, actually filed a case under Article 131 of the Constitution before the Supreme Court. Similarly, Haryana too filed a case regarding an allied issue of the water dispute under Article 131 before the Supreme Court. Both these cases were entertained by the Supreme Court but were taken out of its jurisdiction to avoid decision of the constitutional issues.

- b) In fact, Punjab and Haryana States had themselves instituted suits concerning the very matters, which are now in dispute, in the Supreme Court, and the court had not only entertained them but was engaged in their trial, without objection to its jurisdiction, when the Central Government got them withdrawn in order to avoid decision of the Constitutional validity of the P. R. Act. Even the Central Government never then raised any objection to the jurisdiction of the Supreme Court though it was a party to both the suits.
- c) The I. S. W. D. Act, 1956 concerns only issues about water disputes of inter-state rivers. But, Sutlej, Ravi and Beas are clearly State rivers of Punjab (Section 2 (c)). And, as such, neither the dispute about a state river can be referred to a Tribunal under that Act, nor is section 11 of the said Act in any way attracted. In fact, the actual filing of the two suits before the Supreme Court by both the "states shows that the argument about Section 11 of I. S. W. D. Act, 1956, being a bar to the issue being placed before the Supreme Court is hollow and without any basis.
- d) The only provision that confers finality on the decision of an INTER-STATE WATER DISPUTE TRIBUNAL is Section 11 of that Act. It can become operative only if the dispute concerns an interstate river water and the matters regarding its adjudication do not involve any constitutional issue which can be settled only by the Supreme Court.

On the other hand, reference of the issue to the I. S. W. D. Act would be illegal and suicidal for the cause of Punjab and its future economic development.

1. Since Sutlej, Ravi and Beas are State rivers of Punjab vis a vis Haryana Rajasthan and Delhi, this issue cannot be referred to an Inter-state Water disputes Tribunal.

2. Punjab's fundamental stand is that its Constitutional rights as a riparian State have been violated for the benefit of non-riparian States, since the Central Government has no power to legislate regarding the State rivers of Ravi, Beas and Sutlej. By agreeing to refer the dispute before a Tribunal, we not only compromise our stand and make an admission about these rivers being interstate, but we also virtually give up our strong legal weapon that Sections 78 to 80 of P. R. Act are unconstitutional. Because the tribunal will not only be incompetent to declare the P. R. Act, 1966, to be invalid, but would also give its decisions of apportionment of waters by working within the ambit of the said Sections 78 to 80 and by assuming them to be valid. The only difference will be that instead of the award being given by the Central Government, it would now be given by the Tribunal. But, the basis of the award would be Sections 78 to 80 of the P. R. Act, which the Akali Government sought to knock out as unconstitutional by filing the case before the Supreme Court. Whether it is Tribunal, Commission or even a Board of Supreme Court judges it will have to work within the ambit of Sections 78 to 80 of the P. R. Act unless these judges work as a bench of the Supreme Court because the Supreme Court alone can decide constitutional points & strike.

3. The net result would be that whereas the Government would for the second time be able to circumvent the verdict of the Supreme Court on the issue of the validity of Section 78 to 80 of the P. R. Act (the first time it did so by effecting the agreement of December, 1981 and having the issue withdrawn from the Supreme Court), we shall ourselves now, in fact, become a willing party to that withdrawal and circumvention of the constitutional verdict of the Supreme Court. Because once the Tribunal gives a decision in the case, the jurisdiction of the Supreme Court would become (because of Section 11 of I.S.W.D. Act) barred for all times and the decision of the Tribunal would become final for ever.

4. Another danger is that, if before the Tribunal the three State Governments make an agreement, like the one they did in December 1981, the same would later become legally inviolable before any Court of India. Such a danger cannot be there before the Supreme Court, since the issue for decision would be about the validity of the relevant provisions of the P. R. Act. Besides, in the case before the Supreme Court, even private bodies or persons could be impleaded as a party to the case under Article 32. Hence there would be no chance of a collusive compromise by the States concerned.

5. Another major disadvantage would be that whatever be the nature of apportionment, one thing would become permanent. The powers of control, development and administration conferred on the Central Government under sections 78 to 80 regarding the existing multi-purposes projects and all head-works, etc., will remain with the Central Government or a Board Constituted by it. The net result would be quite ironical. Whereas under the Anandpur Sahib Resolution we are asking for all Central subjects, except four, to become State subjects, by this decision we shall virtually concede Irrigation and Hydel electricity (Constitutionally State Subjects) to become Central subjects, as the control of the multipurpose projects on the three Punjab rivers would remain in central hands for all times to come, because the validity of sections 78 to 80 of the P. R. Act would remain unshaken and these would remain in force.

#### iv) Solution

Therefore, the only fair solution of the water dispute is that the issue about the validity of Sections 78 to 80 of the Punjab Reorganization Act, 1966, should be placed under Article 131 before the Supreme Court for a formal adjudication of the matter. At present, it would be very injudicious and wrong to refer the question of distribution of water to the Tribunal, assuming sections 78 to 80 of the Punjab Reorganization Act to be a valid legislation, especially when the very validity of that law has been seriously questioned both before the Supreme Court and otherwise for the last over ten years .....

The issues being purely constitutional, namely whether sections 78 to 80 of

the Punjab Reorganisation Act and actions taken thereunder are constitutional and valid, and whether the proceedings of the meeting of 1955 constitute an agreement between the two States as provided by the Indian Constitution, these should be placed before the Supreme Court for formal adjudication, and each State and the Centre may argue their points of view so as to get the final verdict of the highest Court of the land. In the meantime, the agreement of 1981 and the award of 1976 should be cancelled and work on the SYL Canal stopped. Punjab is not asking for the moon. It is only pressing for the restoration of the position as it existed before December 1981, when the issue was pending in the Supreme Court under article 131, as between the Punjab, Haryana and the Centre. An informal reference to the Supreme Court, a board of judges of the Supreme Court or a commission in whatever form it be, or a reference to the Tribunal, will be another catch and a betrayal of the rights of the people of Punjab for generations to come. Such a body is not competent to decide the constitutional issues nor can it strike down Section 78 to 80 of the P. R Act. And so long as these sections stand the usurpation of the constitutional & the fundamental economic rights of Punjab will stand.

It is an adjudication by the Supreme Court that alone can undo the unconstitutional and discriminatory usurpation of the rights of Punjab and the Punjabis. The Central Government has always been, by one means or the other, shirking and avoiding a judicial verdict of the Supreme Court on this Constitutional issue. The proposal of a reference to the Tribunal a Supreme Court Judge or Commission, is now another attempt to side-track the real issue, because such a Tribunal is competent neither to decide the constitutional issues, nor to hold Sections 78 to 80 of the P.R. Act as invalid. Nor can it restore to Punjab the constitutional rights of this State to control, develop and administer the irrigation and power projects on its own rivers.

The Council, therefore, emphasises that any reference to a Tribunal even if constituted by Supreme Court Judges or a like body or the maintenance of the present or post- 1966 utilisation of the Punjab waters and energy by Haryana or Rajasthan and their control by the Centre would be a betrayal of the rights and

the interests of Punjab. Everyone is aware of the economic and developmental role and importance of water and energy in this technological age in which these two things are becoming increasingly scarce.

## **11. The Impact of Central Decisions on Punjab's Economy**

### **(i) Water & hydel power drained out**

After the Partition, out of about 170 MAF of Punjab waters, the East Punjab was left with 32.7 MAF plus 5.6 MAF as East Punjab's shares of Jamana waters. The 5.6 MAF have now entirely been given to Haryana, evidently on the ground that the present Punjab is non-riparian in regard to the Jamana. Of the 32.7 MAF waters of the present Punjab, non-riparian States of Rajasthan, Haryana and Delhi have got about 19 MAF, and the riparian States about 13 MAF, including 0.65 MAF for J & K. A discriminatory principle has been followed by excluding from the distribution pool Jamuna waters for which Punjab is non-riparian, and including Punjab's waters for which Rajasthan, Haryana and Delhi are all non-riparian. If the pre-partition use of its own waters is excluded, the Centre has allotted to Punjab hardly 16.7% of its own waters, 83.3% having been allotted to the non-riparian States of Rajasthan, Haryana and Dehli. This is the net result of a series of Central decisions, slowly and deliberately denuding Punjab of over two-third of its waters and energy i.e. its greatest wealth and asset. Every time the Centre got an opportunity to handle the case of Punjab waters a major chunk was given to the non-riparian States, reducing the riparian Punjab to be a minor allottee of its own waters.

Before 1947, Punjab and Bikaner were using 9 and 1.275 MAF respectively of waters. The total waters of Sutlej, Beas and Ravi being about 32.65 MAF, the un-utilized water of these three rivers that fell to the share of Riparian Punjab after Independence, were 22.375 MAF. Of these waters, 0.65 MAF have gone to J & K State. The table below shows how since 1947, the Centre has distributed the remaining 21.725 MAF waters of Riparian Punjab among the states of Punjab and non-riparian Haryana, Rajasthan and Delhi.



Share of each State in MAF of Waters						
Year	Punjab	Haryana	Rajasthan	Delhi	Total waters	Remrks
1947	Used 9.0 Un-used 21.725	—	1.275 Gang Canal	—	Used 10.275 Un-used 21.725	The total of 32 excludes share of J & K.
	<hr/> 30.725				<hr/> 32	
1954	15.325	5.00 (includes old use)	1.40	—	21.725	Sutlej waters
1955	7.325	5.00	9.40	—	21.725	awarded 8 MAF
1976/81	3.625	8.50	9.40	0.2	21.725	awarded 3.7 MAF
1982		8.50+ 5.58	—	—	32.0 Punjab rivers 5.58	12.625-Punjab
Final Position including prepartition use & Jamuna waters					Jamuna river 5.58	14.08-Haryana
						10.675-Rajasthan
						.2-Delhi
	<hr/> 12.625	<hr/> 14.08	<hr/> 10.675	<hr/> 0.2	<hr/> 37.58	<hr/> 37.580

The net result is that where as before the partition Punjab was using 9 MAF of its waters, today its total allotment including the prepartition use is 12.625 MAF. This means that during the last 35 years when the Centre Government got an opportunity to distribute 21.725 MAF of Punjab waters available to it after Independence, it gave only 3.625 MAF to Punjab i.e. 16.7% of waters, giving to non-riparian Haryana, Rajasthan & Delhi the remaining 83.3% of the waters of Punjab. Where as today the Riparian Punjab has to be content with only 12.6 of its waters, the total waters available to Haryana & Rajasthan are 14.08 and 10.675 MAF respectively. It is no incongruous that where as all the

5.58 MAF of Jamuna waters have been given to Haryana and none to neighbouring Delhi, the latter has been allotted 0.2 MAF from the far too distant rivers of Punjab. Such is the patent unfairness of Central decisions made since 1947. No state of people conscious of their just and fundamental rights can accept such gross injustice.

## (ii) Loss of Punjab

As the result of the above mentioned decisions of the Central Government about 18 m.a.f of Punjab waters have been allotted to the non-riparian states. The capitalised value of this water at present standard of assessment is Rs. 36,000 crores.

Let us see what on this allotment is the loss of Punjab in its agricultural production. If the 19 MAF of waters were utilised in Punjab, these at the present rate of water allowance, would irrigate about 75 lac acres each year. The statistical abstract shows that in Punjab the foodgrain yields per acre of irrigated land are 2.2 tons higher than those from the non-irrigated area. Thus, irrigation gives an additional income of Rs. 3300 per acre. This will mean a loss of Rs. 2500 crores per annum to the Punjab and an equivalent gain or Central gift to the non-riparian States each year. The annual loss in power, and consequent loss in industrial production, re-investment, and generation of employment, would be easily four times more.

This loss is being inflicted at a time when the Punjab's farmers are in acute need both of water and power and its industry is famishing for want of energy. In fact, the farmers are losing over 100 crores each year by having to resort to inefficient diesel irrigation or ill-fed electric tubewells.

This is the stark reality and result of Central decision which the State Government is asking the Punjabis to celebrate and rejoice over.

### (iii) Economic Future Jeopardised

It needs emphasis that natural sources of water & hydel energy once depleted or transferred are irreplaceable. International experts have given warnings that water is becoming scarce in the world, including India and U.S.A. It has to be realised that this heavy encroachment on the water and power resources of the Punjab would permanently and seriously affect the entire economic well being & progress of all the coming generations of Punjabis. It is, therefore, the personal duty of every person & Punjabi to consider and assess the facts dispassionately since the present decisions are going to make or mar the socio economic health of entire posterity.

## 12. Some points that need clarification

- (i) (a) Whether Punjab will lose the present level of irrigation; and
- (b) Whether water is enough for supply to the Syl canal ?

As per figures given in the Beas Project Report, March, 1966, Vol. II, the total mean flow and the dependable flow of the three rivers are as under :—

Mean year flow 1921-22 to 1959-60	Ravi at Madhopur	6.971 MAF
	Beas at Mandi plain	13.590 MAF
	Sutlej at Bhakra	13.329 MAF
Total :—		33.890 MAF
Dependable flow in a year 1921-22 to 1959-60	Ravi at Madhopur	5.422 MAF
	Beas at Mandi plain	10.405 MAF
	Sutlej at Bhakra	11.125 MAF
Total :—		26.952 MAF

- (ii) A dependable year is a hypothetical year in which the mean discharge of any 10 daily periods is equalled or exceeded by the corresponding 10 daily mean discharges in 67% of years for which data are considered. However, the total annual flow in a dependable year represents availability for about 90% of the time.
- (iii) Obviously, it is the dependable flow that matters and not the theoretical mean flow. The existing requirement of the three canals (Bhakra canals 7.503 MAF, Sirhind Canal perennial 5.789 MAF and non-perennial 0.905 MAF, and Bist Doab-restricted perennial 0.568) drawn from the Sutlej is 14.765 MAF. Thus, against the dependable flow of 11.125 MAF from the Sutlej, the existing three canals mentioned above require 14.765 MAF.
- (iv) According to the Beas Project Report W. J. Feeder, of 2700 cusec capacity was also to be constructed out of which Haryana was to get .769 MAF. Against this, it is proposed now to provide Haryana Canal with a capacity of 6500 cusecs to carry 3.5 MAF of water to Haryana.
- (v) Since then the Beas Sutlej Link has been constructed. Its designed capacity is to carry annually 3.62 MAF of Beas waters into the Bhakra lake. The actual flow is far less. Even with this addition of 3.62 MAF of water (though, at present only 2.5 MAF are flowing) dependable flow from Bhakra will be only 14.745 MAF.
- (vi) But, as the Beas Sutlej link will be diverting Beas waters to Bhakra, there will be less water available in the Pong Dam for Harike. It will, therefore, be necessary to release 1.374 MAF at Bhakra for Harike canals. Taking out this water out of the total mean supply of 13.329 MAF of Sutlej plus 3.62 MAF of Beas Sutlej link i.e. a total of 16.949 MAF the net flow available will be only 15.575 MAF in a mean year which will hardly be sufficient to run the existing canals. But in practice the flow available in a dependable year will be only 13.371 MAF ( $14.745 - 1.374 = 13.371$  MAF). This will be short by 1.694 MAF to run the existing canals which require 14.765 MAF.

(vii) Further, we find that the requirements of the three canals have been worked out on the basis of a low water allowance of 2.75 cusecs per 1000 cultivable command area. The present pattern of cropping requires almost double the water allowance. Therefore, the water requirements of these canals will be far greater than calculated before and these will have to be worked to their full capacity which it would even be necessary to increase because of the mounting essential demand. Even now the water allowance for Rajasthan is permitted at 5.5 cusecs instead of at 2.75 cusecs as in Punjab.

(viii) It is, therefore, clear that not only is there no water for the SYL canal sought to be created, but the total available supply at Ropar can neither run the existing canals to full capacity nor sustain the new cropping pattern. In case any supplies are diverted to Haryana, perforce the present areas in Punjab would become proportionately dry. For, no one can defy simple Arithmetic. It is evident that every cusec drained in the SYL canal will correspondingly reduce the existing supply, and every acre irrigated by the SYL in Haryana would, inevitably, make an equivalent area dry in Punjab. It would, thus, be idle to suggest that the implementation of the agreement of 1981, or the digging of the SYL canal to Haryana or the diversion of Beas-Ravi waters to Rajasthan would not correspondingly reduce the present level of irrigation, nor affect adversely the badly needed water availability in the Punjab.

9. Another misleading statement that is being made is that 20 lac acres or more of waters are flowing to Pakistan and that the SYL canal and the present agreement would not affect the existing irrigation in Punjab and would, in fact, only utilize, both for Punjab and Haryana, the waters now going waste to Pakistan. This is baseless. With the construction of the Bhakra and Pong Dams not a drop of Sutlej and Beas waters is going to Pakistan except some run off (rainy water) in the lower regions. As to the Ravi, the mean flow of water are 6.4 MAF. Against its requirement of the UBDC and Kashmir canals are 3.785 and 0.745 MAF respectively (total 4.530). That leaves a balance of only 1.87 MAF at Madhopur. But, Beas-Ravi Link at Madhopur with a capacity of 10,000 cusecs can take away 2.20 MAF if there is enough water, leaving nothing

to flow to Pakistan. It is only in the rainy season of July and August that there could be some excess beyond the capacity of the three canals mentioned above. Even taking the mean flow of 6.971 (according to the 1920-21-60-61 series), the surplus can be only 2.41 lac acre ft. (6.971-6.730). This 2.41 lac acre ft. of flood water is neither of any use to us nor to Pakistan and can only be a curse for that country. In short, all the waters of the three Punjab rivers, except 2.41 lac acre ft. in the flood season, have been taken care of. It is, therefore, plain that any diversion of Ravi-Beas waters in the SYL canal or to Rajasthan will cause equivalent loss to present Punjab Irrigation. It is only the Thein Dam which will completely stop flow of Ravi waters to Pakistan. And, for the delay in its execution no one is responsible except the Centre who have, since 1966, been using their power to sanction the scheme as a lever to force Punjab to accept the unjust transfer of their waters and energy to Haryana and Rajasthan, or to accept the illegal and unfair award of 1976. And, now when the Punjab Government has accepted the award, it is being declared that the Thein Dam would be sanctioned.

10. Today, the canal irrigation in Punjab is 32.5% of its area. It is 29% in Haryana. The net result will be that with the flow of 3.5 MAF of Punjab waters, to Haryana, its percentage of canal irrigation would go up to 41% and that of Punjab would go down to 20%. When Haryana utilizes the erstwhile Punjab waters Yamuna (5.58—1.84=3.74 MAF unused till 1966) allotted to it, its irrigation will rise further to 56% compared to Punjab's 20%. It is therefore, sheer moonshine to say that the S.Y.L. canal will not reduce the irrigated area in Punjab or that it will take only the water now going to Pakistan.

#### **Alleged saving of water from the lining of channels and watercourses.**

11. It has been stated that the programme for the lining of Punjab canals and watercourses would save enough water to irrigate 27 lac acres. This assertion is another myth. Today the entire canal system of Punjab is irrigating 35 lac acres. It is ridiculous to suggest that the lining of these canals and watercourses alone will irrigate another 27 lac acres. Apart from the fact that such a heavily expensive scheme could never make the promised saving of

water, the project would be clearly suicidal. Punjab has over 6 lac tubewells. The present assesment of ground water supply and other indications suggest that Punjab has sunk far too many tubewells than the available ground water 3 MAF can feed. Already, the water table has gone down by three to twenty feet at most places. Expert opinion has opposed the programme of canal lining. Because it would not only preclude all extension of tubewell irrigation, but also seriously effect the supply of existing tubewells. And it has already been indicated that even if all the waters of Punjab rivers were utilized for canal irrigation, the State would still need extension of tubewell irrigation. It would, indeed, be wasteful, and reckless that, on the one hand, the State or the private owners of water courses should spend hundreds of crores on lining, and, on the other hand, the entire existing tubewell supply, as also its extension, should be jeopardised. And why on earth should Punjab indulge in such self-defeating and expensive experiments in order to give its own waters to a non-riparian State. Let the latter pay for it and purchase the surplus water, if any, available without affecting the ground water supply. Otherwise, it would be a case of rob Peter to pay Paul.

### **Distribution of energy and central stranglehold on the Industrial and Agricultural Development**

12. Energy is the base of all industrial and agricultural development and socio-economic progress. Punjab has ample riparian sources to be exploited for its advantage. But, the Centre linked the distribution of energy to the distribution of Punjab's waters. While Punjab's industry and agriculture are starved of power, and closures, like canal closures, have become a normal feature, involving serious damage to its industry, the factory and other workers, and the farmers, power is being transferred to the non-riparian States on grounds as spurious as adopted for the transfer of water to them.

Punjab is far away from the sources of energy and raw material like coal, oil and minerals. But, its chief and cheap sources of energy are being exploited for the benefit of non-riparian States. And, Punjab is being asked to instal thermal plants. Apart from the fact that the long coal supply line always remains interrupted, thermal power is five times more expensive than hydle energy.

Thirdly, just as in the case of waters, all arbitral powers of distribution are kept in the Central hands, involving the diversion of the bulk of electric supply to non-riparian States. Not only that, on grounds of ensuring day-to-day fair distribution (according to the Central conception of fairness), the running and the maintenance of all multipurpose projects, major schemes and headworks have been kept under the Central Control and administration.

Fourthly when Punjab, on its own, wants to improve or exploit its water and energy sources through a scheme like the Thein Dam, the project though technically sound, remains unapproved for decades on end. It is a scheme that would stop the flow of all water to Pakistan. On the one hand, all attempts to execute the schemes have been frustrated by the Centre (the cost of the scheme in the meantime has gone up from 70 crores to 500 crores), on the other hand, the State is being accused of neglect in allowing Punjab waters to flow to Pakistan.

As against all this, the Central approach towards the State can be judged from the fact that of the 22,000 crores of rupees spent on public-sector industries less than 2% have been invested in the Punjab and no major industrial project has been located in the State. Savings by the people and capital formation are an essential means of economic growth. But, 80% of the bank deposits by the Punjabis are invested outside the State so as to promote economic progress elsewhere.

### **Loss of faith in the Central Government**

13. The Central decisions in draining out the water, energy and financial resources of Punjab, and the Central policy about the location of public-sector projects and niggardly industrial investment in the State, are looked upon as unjust, illegal and discriminatory by the Punjabis, particularly the Sikhs. This has led to two results ; a shaken faith in the sense of fairness of the Central Government, and a pressing demand for greater State autonomy as the only way of securing the socio-economic progress of the Punjab. The Sikhs are very sore on one point. When they criticise the openly discriminatory socio-economic policies



of the Centre, such as in the River Water Dispute, that affect adversely the economic well being and future of every Punjabi and the entire Punjab, the Punjab Hindus rarely join them in voicing the protest. This gives the Centre an opportunity, on the one hand, to mask their unjust decisions with a seeming cloak of fairness, and, on the other hand, to dub the Sikh criticism as merely sectarian. This is creating a very unhealthy and dangerous Hindu-Sikh syndrome and schism which will be exploited by the extremists on both sides.

#### **14. Conclusion**

The above discussion leads to the following conclusions :—

##### **(a) Riparian Law and Indian Constitution.**

The International Law and the Indian Law and Practice (Article 262) lay down that river waters are the exclusive property of the state or the Province in which these flow. Haryana, Rajasthan and Delhi being outside the run, the valley or the basin of Sutlej Beas or Ravi, these states have no claim whatsoever on the waters and energy of these rivers.

##### **(b) Share of Punjab on Partition.**

At the time of partition, out of 170 MAF of waters of the old Punjab, West Punjab got 133 MAF and the East Punjab got 32 MAF (all the waters of Sutlej, Beas and Ravi) plus 5.58 MAF of the Jamuna waters.

##### **(c) Present position of irrigation by Government & private efforts.**

Punjab has 105 lac acres of culturable area, of these about 35 lac acres are inadequately irrigated by canals about 50 lacs are irrigated by 3.3 lac diesel and 2.8 lac electric tubewells. In the last 20 years, whereas the number of private tubewells rose from 90 thousand to 6 lacs and irrigated area rose by 20 lac acres; canal irrigation increased only by 6 lac acres.

**(d) Punjab requirement of waters.**

Diesel irrigation is 12 times as expensive as canal irrigation. Therefore river waters are required not only to replace diesel irrigation and give adequate water allowance to existing channels, but also to irrigate the remaining 20 lac acres of Barani area. The recommended dose of irrigation for the present cropping pattern in Punjab is 5 acre feet per acre. The total requirement of water for Punjab thus, comes to 52.5 MAF. Therefore, Punjab not only needs all the waters of Sutlej, Beas and Ravi but further needs 20 MAF to be drawn by electric tubewells.

**(e) Unjust and illegal distribution.**

While Punjab desperately needs every drop of its river waters, the centre has by a series of unjust decisions concerning the Bhakra Project, the Beas project, etc., allotted illegally about 10.7, 8.5 and .2 MAF to non riparian Rajasthan, Haryana and Delhi, leaving only 12.6 MAF for the riparian Punjab. In addition, Haryana gets 5.58 MAF of Yamuna waters. It is clearly discriminatory and self contradictory that whereas 5.58 MAF of Yamuna waters have been exclusively given to Haryana—a part of the Yamuna Basin, two-third waters of riparian Punjab have been allotted to non-riparian states, all outside the basin of Punjab rivers. In the pre-Independence days, all the 10.275 MAF of waters of Punjab rivers were used for irrigation only in the riparian Punjab, except 1.275 MAF for Bikaner for which Punjab charged royalty. After Independence, the Centre has allotted only 16.7% of its own waters, to Punjab, the remaining 83.3% have been given to the non riparian states of Haryana, Rajasthan and Delhi.

**(f) Wrong use of Sec. 78 of Reorganisation Act.**

Apart from the fact that Sec 78 is unconstitutional, it has wrongly been used to make allotments for the Rajasthan and the SYL Canals, since these items are beyond the scope of Sec. 78 which deals only with the Sutlej-Beas link and the Pong Dam on Beas river and not with the Ravi waters at all. In fact, the SYL canal is a post Reorganisation Project of Haryana, for which no allotment was ever contemplated in the Beas Project. The Reorganisation Act relates only to

Punjab and Haryana. Therefore, allotment of 8.6 MAF to a non-successor state (Rajasthan) is unwarranted under Sec. 78.

**(g) Effect of SYL & Rajasthan canals on Punjab.**

As per Beas Project report of 1966, the total requirements of the present three Canals which draw water from Bhakra is 7.503 MAF for Bhakra Canal, 6.694 MAF for Sirhind Canal and .568 MAF for Bist Doab Canal making a total of 14.765 MAF. Even if 3.6 MAF of Beas Sutlej link is added to the dependable flow, that would come to 14.725 MAF which would just be sufficient to run the existing three Canals. In case the proposed SYL canal takes away the allotted 3.5 MAF, it will inevitably reduce Punjab's irrigation by 14 lac acres. Further when 6 lac acres feet out of Rajasthan share, which is being used by Punjab now, is taken away, further 2 lac of acres more of land will go dry.

(h) It is a mis-statement to say that millions of acres feet of water are flowing into Pakistan. From Sutlej and Beas, practically nothing goes to Pakistan. Out of 6.5 MAF of Ravi waters, UBDC, Kashmir canal and Ravi-Beas link require 3.785, .744 and 2.204 MAF respectively making a total of 6.733 MAF. At worst, it is only during the flood season that about .2 lac acre feet of water could go to flood Pakistan. This too will be taken care of by the Thein Dam, the sanction of which has been delayed by the Centre for the last 18 years.

(j) It is misleading the Punjabis to say that the lining of channels and water courses at Public and Private expense will save 6.3 MAF of water. Apart from such a Project being highly expensive and wasteful, it will be suicidal for the existing tubewell irrigation, which gives assured supply to 50 lac acres of Punjab area. The ground water can hardly sustain the existing tubewells and any reduction in the percolation will make half the tubewells virtually dry.

(k) There is no mineral or other raw materials from which the Punjab may benefit. The Punjab rivers water is the only source from which the Punjab can hope to irrigate its lands and make some progress in its agriculture and industry. But by the various agreements/commandments, it is being denuded

of this solitary source of its wealth. All Central decisions regarding the awards, the agreements, and the SYL canal, etc. are just ways and cloaks to draw out the only wealth of Punjab for non-riparian Haryana, Rajasthan and Delhi. This drain will completely arrest the entire agricultural & industrial development in Punjab and the socio-economic future of its people. The loss to Punjab in agricultural production above is worth Rs. 2500 crores. The loss in industrial development, & employment will be far greater.

(i) The Council, therefore, stresses that no political party has the right to jeopardize the fate and future of the Punjab and its coming generations by mortgaging or compromising on the fundamental constitutional rights of the people when these can be adjudicated upon only by the Supreme Court. Otherwise a continuous controversy, agitation, frustration or a sense of grievance in this border state would neither be in the interests of the Punjab nor that of the country, especially in the present national and International context.

(ii) Appeal : River waters dispute is of such crucial importance to the people of the Punjab, that a fair solution of it is essential for the restoration of peace and amity in the State. Patently wrong & unjust central decisions have created all kinds of political and sectarian tensions which the extremists are trying to exploit. We, therefore earnestly appeal to every well wisher of the nation to study the problem dispassionately and strive for a just and fair solution of the problem. It would be wrong & risky to be complacent about this issue because, unless there is a just solution the matter could lead to dangerous results in the Social and political fields. In a federal structure the way to national integration is to let every Section of its peoples work out its own Socio-economic future & exploit its natural resources. We hope that saner counsel would prevail to save the State from economic stagnation and Socio-political turmoil.





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